

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
: v - :  
: : 02 Cr. 0733 (JSR)  
:

JERRY FRITH,  
Defendant.

----- x  
----- x  
JERRY FRITH, :  
: Petitioner,

----- x  
UNITED STATES OF AMERICA, : ORDER  
: Respondent.

12-30-09

JED S. RAKOFF, U.S.D.J.

By Order dated May 30, 2006, the Court denied defendant's first § 2255 motion in docket number 04 Civ. 1519. By Order dated August 28, 2008, the Court denied two motions for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b) in 04 Civ. 1519 and one motion to correct judgment pursuant to Federal Rule of Criminal Procedure 36 in docket number 02 Cr. 733. By Order dated September 23, 2009, the Court transferred defendant's second § 2255 motion to the U.S. Court of Appeals for the Second Circuit as "second or successive" under 28 U.S.C. § 2244(b)(3)(A). Defendant has now moved for leave to appeal in forma pauperis and for a certificate of appealability.

Because defendant has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. Since defendant's claim lacks any arguable basis in law or fact, the Court hereby certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith. See Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005). Defendant's motions are therefore denied.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
December 29, 2009